

Section 20. The Taxpayer's Bill of Rights.

(1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:

(a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions.

(a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: "**NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE.**" Except for district voter-approved additions, notices shall include only:

- (i) The election date, hours, ballot title, text, and local election office address and telephone number.
- (ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.
- (iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.
- (iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.
- (v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b) (iv). Ballot titles for tax or bonded debt increases shall begin, "**SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?**" or "**SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?**"

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

- (a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.
- (b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

(5) Emergency reserves. To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding

bonded debt service. Unused reserves apply to the next year's reserve.

(6) Emergency taxes. This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3) (c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.

(c) A tax not approved on the next election date 60 days or more after the declaration shall end with that election month.

(7) Spending limits. (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Source: Initiated 92: Entire section added, effective December 31, 1992, see **L. 93**, p. 2165. **L. 94:** (3)(b)(v) amended, p. 2851, effective upon proclamation of the Governor, **L. 95**, p. 1431, January 19, 1995. **L. 95:** IP(3)(b) and (3)(b)(v) amended, p. 1425, effective upon proclamation of the Governor, **L. 97**, p. 2393, December 26, 1996.

Editor's note: (1) Prior to the TABOR initiative in 1992, this section was originally enacted in 1972 and contained provisions relating to the 1976 Winter Olympics and was repealed, effective January 3, 1989. (See L. 1989, p. 1657.)

(2) (a) The Governor's proclamation date for the 1992 initiated measure (TABOR) was January 14, 1993.

(b) Subsection (4) of this section provides that the provisions of this section apply to required elections of state and local governments conducted on or after November 4, 1992.

Cross references: For statutory provisions implementing this section, see article [77](#) of title [24](#) (state fiscal policies); §§ [1-1-102](#), [1-40-125](#), [1-41-101](#) to 1-41-103, 29-2-102, and 32-1-803.5 (elections); §§ [29-1-304.7](#) and 29-1-304.8 (turnback of programs delegated to local governments by the general assembly); §§ [43-1-112.5](#), [43-1-113](#), [43-4-611](#), [43-4-612](#), [43-4-705](#), [43-4-707](#), and 43-10-109 (department of transportation revenue and spending limits); §§ [23-1-104](#) and 23-1-105 (higher education revenue and spending limits); §§ [24-30-202](#), [24-82-703](#), [24-82-705](#), and 24-82-801 (multiple fiscal-year obligations); §§ [8-46-101](#), [8-46-202](#), [8-77-101](#), [24-75-302](#), and 43-4-201 (provisions relating to individual funds and programs); and § [39-5-121](#) (property tax valuation notices); and, concerning the establishment of enterprises, §§ [23-1-106](#), [23-3.1-103.5](#), [23-3.1-104.5](#), [23-5-101.5](#), [23-5-101.7](#), [23-5-102](#), [23-5-103](#), [23-70-107](#), [23-70-108](#), and 23-70-112 (higher education, auxiliary facilities), part 2 of article [35](#) of title [24](#) (state lottery), part 3 of article [3](#) of title [25](#) (county hospitals), §§ [26-12-110](#) and 26-12-113 (state nursing homes), article [45.1](#) of title [37](#) (water activities), § [43-4-502](#) (public highway authorities), and § [43-4-805](#) (state bridge enterprise).

ANNOTATIONS

Analysis

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I. GENERAL CONSIDERATION.

C.J.S. See 81A C.J.C., States, §§ 349-351, 358-365, 379; 84 C.J.S., Taxation, § 12.

Law reviews. For article, "Amendment One: Government by Plebiscite", see 22 Colo. Law. 293 (1993). For article, "Use of the Nonprofit Supporting Foundation to Assist Governmental Districts After Amendment 1", see 22 Colo. Law. 685 (1993). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part I", see 27 Colo. Law. 55 (April 1998). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part II", see 27 Colo. Law. 65 (May 1998). For article, "Taming TABOR by Working from Within", see 32 Colo. Law. 101 (July 2003). For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Interpretation of a constitutional provision is a question of law and an appellate court is not required to accord deference to a trial court's ruling in that regard. *Cerveney v. City of Wheat Ridge*, 888 P.2d 339 (Colo. App.

1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996).

In interpreting a constitutional amendment that was adopted by popular vote, courts must determine what the people believed the language of the amendment meant when they voted it into law. To do so, courts must give the language the natural and popular meaning usually understood by the voters. *Cerveney v. City of Wheat Ridge*, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996); *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

In interpreting a constitutional provision, the court should ascertain and give effect to the intent of those who adopted it. In the case of this section, it is the court's responsibility to ensure that it gives effect to what the voters believed the amendment to mean when they accepted it as their fundamental law, considering the natural and popular meaning of the words used. *City of Wheat Ridge v. Cerveney*, 913 P.2d 1110 (Colo. 1996).

A court will not assume that all legislative drafting principles apply when interpreting an initiated constitutional amendment but will apply generally accepted principles such as according words their plain or common meaning in order to enact the intent of the voter in the same manner as it would otherwise seek to enact the intent of the legislature. *Bruce v. City of Colo. Springs*, 129 P.3d 988 (Colo. 2006).

The language in subsection (1) stating that the preferred interpretation of this section "shall reasonably restrain most the growth of government" is an interpretative guideline that a reviewing court may employ when it finds two separately plausible interpretations of the text of this section. It is not a refutation of the beyond a reasonable doubt standard. As the presumption of constitutionality applies to a statute challenged under this section, the beyond a reasonable doubt showing is necessary to overcome that presumption. *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519 (Colo. 2009).

Where multiple interpretations of a provision of this section are equally supported by the text of that section, a court should choose that interpretation which it concludes would create the greatest restraint on the growth of government; however, the proponent of an interpretation has the burden of establishing that its proposed construction of this section would reasonably restrain the growth of government more than any other competing interpretation. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994); *Nicholl v. E-470 Pub. Hwy. Auth.*, 896 P.2d 859 (Colo. 1995); *HCA-Healthone, LLC v. City of Lone Tree*, 197 P.3d 236 (Colo. App. 2008).

A court should require a significant financial burden on the state only if the text of this section leaves no other choice. Courts have consistently rejected readings that would hinder basic government functions or cripple the government's ability to provide services. *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008).

Amendment's objective is to prevent governmental entities from enacting taxing and spending increases above its limits without voter approval. *Campbell v. Orchard Mesa Irr. Dist.*, 972 P.2d 1037 (Colo. 1998).

This section requires voter approval for certain state and local government tax increases and restricts property, income, and other taxes. *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993).

And acts to limit the discretion of government officials to take certain actions pertaining to taxing, revenue, and spending in the absence of voter approval. *Property Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs*, 956 P.2d 1277 (Colo. App. 1998).

This section operates to impose a limitation on the power of the people's elected representatives, and while this section circumscribes the revenue, spending, and debt powers of state and local governments, creating a series of procedural requirements, it does not create any fundamental rights. *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

Districts may seek present authorization for future tax rate increases where such rate increases may be necessary to repay a specific, voter-approved debt. Any rate change ultimately implemented by a district pursuant to the "without limitation as to rate" clause in the ballot title must be consistent with the district's state estimate of the final fiscal year dollar amount of the increase. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

This section and article XXVII of the Colorado Constitution are not in irreconcilable, material, and direct conflict, since this section does not authorize what article XXVII forbids or forbid what article XXVII authorizes. *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993).

Since the inclusion of all net lottery proceeds in the calculation of state fiscal year spending creates an

implicit conflict between this section and article XXVII, legislation exempting net lottery proceeds dedicated by article XXVII to great outdoors Colorado purposes from this section and subjecting such proceeds dedicated to the capital construction fund and the excess that spill over into the general fund to this section represented a reasonable resolution of that implicit conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section and § 9 of article XVIII of the Colorado Constitution are not in direct conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section and § 3 of this article reconciled. In order to reconcile the requirement of subsection (8)(c) of this section that residential property be valued "solely by the market approach to appraisal" with the equalization requirement of article X, § 3, the actual value of residential property must be determined using means and methods applied impartially to all the members of each class. Podoll v. Arapahoe County Bd. of Equaliz., 920 P.2d 861 (Colo. App. 1995), rev'd on other grounds, 935 P.2d 14 (Colo. 1997).

This section does not conflict with § [1-11-203.5](#), which governs ballot title contests. Since the limited period for filing ballot title contests specified in § [1-11-203.5](#) also is not "manifestly so limited as to amount to a denial of justice", § [1-11-203.5](#) is constitutional. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

Amendment relates back. Although under art. V, § 1(4), this section took effect January 14, 1993, once effective, its terms could and did relate back to conduct occurring the day after the 1992 election. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Dispute under election provisions reviewed under a "substantial compliance" standard. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

Substantial compliance found. District in mail ballot election found to have substantially complied with section when purposes of the ballot disclosure provisions are not undermined and all required information was in the election notices if not the ballot title. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

Voter approval of dollar amounts not required. This section does not require voter approval of a dollar amount when the revenue change is not a district tax increase. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

The Taxpayer's Bill of Rights does not grant governmental entities the right to file enforcement suits or class action suits. Boulder County Bd. of Comm'rs v. City of Broomfield, 7 P.3d 1033 (Colo. App. 1999).

Plaintiff had standing, as expressly provided under this section, to bring action as an individual taxpayer to determine whether E-470 authority was subject to this section's regulation. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Petitioners have taxpayer standing to challenge the constitutionality of transfers of money from special funds to the general fund and the concomitant expenditure of that money to defray general governmental expenses. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

The four-year time limitation for individual or class action suits under this section applies to enforcement of the specific requirements of this constitutional provision, but does not affect the statute of limitations set forth in the statutory provisions regarding taxes that were levied erroneously or illegally. Property Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs, 956 P.2d 1277 (Colo. App. 1998).

Provisions for collecting and spending revenues entered into by the E-470 public highway authority were not subject to the election provisions of this section where bond contracts entered into prior to passage of this section required that the revenues would be received and spent by the highway authority for the purpose of operating the highway and repaying the indebtedness. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994).

The phrase "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" in § 20 of article X is necessarily broader than the phrase "debt by loan in any form" as defined by this section. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999) (overruling Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994)).

However, the scope of the phrase is not without bounds. The voters could not have intended an absurd result

such as requiring voter approval for a multiple year lease-purchase agreement for equipment such as copy machines or computers. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

County's equipment lease-purchase agreement did not create any multiple-fiscal year direct or indirect district debt or other financial obligation under this section where the county was free to terminate the agreement without penalty by failing to appropriate funds to pay the rent in any lease year. *Boulder v. Dougherty, Dawkins*, 890 P.2d 199 (Colo. App. 1994).

This section does not supersede prior case authority permitting lease purchase agreements. This section is analyzed in light of the existing well-established constitutional law in existence at the time of this section's adoption. *Boulder v. Dougherty, Dawkins*, 890 P.2d 199 (Colo. App. 1994).

Tax status. Whether the interest income derived from a county's equipment lease agreement or any similar transaction is tax free has no impact on the court's interpretation of the Colorado Constitution. *Boulder v. Dougherty, Dawkins*, 890 P.2d 199 (Colo. App. 1994).

This section creates a series of procedural requirements and nothing more. This section circumscribes the revenue, spending, and debt powers of state and local governments, it does not create any fundamental rights. With respect to the attorney fee provision of subsection (1), a holding that a victorious plaintiff must recover attorney fees as of right is antithetical to the overarching goal of the section to limit government spending. *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110 (Colo. 1996).

This section does not provide an exemption from any obligation under the Colorado Open Records Act. Whether an institution is an "enterprise" does not have a bearing on whether it is free from the requirements of the Act. *Freedom Newspapers, Inc. v. Tollefson*, 961 P.2d 1150 (Colo. App. 1998).

Charges imposed on cable subscribers and for city street light service are fees, not taxes, and, therefore, are not subject to the ballot title and information and voter approval requirements of this section. *Bruce v. City of Colorado Springs*, 131 P.3d 1187 (Colo. App. 2005).

Passage of this section directly modified the powers of home rule cities, and a home rule city's ordinance is invalid to the extent that it conflicts with this section's requirements. *HCA-Healthone, LLC v. City of Lone Tree*, 197 P.3d 236 Colo. App. 2008).

II. DEFINITIONS.

E-470 authority is a district subject to the voter approval provisions of this section since the power to unilaterally impose taxes, with no direct relation to services provided, is inconsistent with the characteristics of a business as the term is commonly used, nor is it consistent with the definition of "enterprise" read as a whole. *Nicholl v. E-470 Pub. Hwy. Auth.*, 896 P.2d 859 (Colo. 1995).

The attorney fee provisions of this section authorize an award of fees but do not require such an award. The fee-shifting phrase "successful plaintiffs are allowed costs and reasonable attorney fees" set forth in subsection (1) is plain and unambiguous. It allows a court to make an award of attorney fees but does not require the court to do so. *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110 (Colo. 1996).

In assessing whether to award attorney fees under this section, the court must consider a number of factors and reach its conclusion based on the totality of the circumstances. Most importantly, the court must evaluate the significance of the litigation, and its outcome, in furthering the goals of this section. This evaluation must also include the nature of the claims raised, the significance of the issues on which the plaintiff prevailed in comparison to the litigation as a whole, the quantum of financial risk undertaken by the plaintiff, and the factors the court would weigh in determining what "reasonable" attorney fees would be. The court may also consider the nature of the fee agreement between the plaintiff and plaintiff's attorney. Where the plaintiff has had only partial success, the court must exclude the time and effort expended on losing issues if it chooses to award attorney fees. *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110 (Colo. 1996).

The appropriateness of awarding attorney fees is diminished where the named plaintiff bears no risk and the benefit of an award of attorney fees will accrue to others. In addition, deficiencies in the attorney fee agreement, including deviation from rule requirements or professional standards, may adversely impact the quality of the representation or cause the court to find that the attorney's conduct does not merit an award regardless of a successful outcome. *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110 (Colo. 1996).

The fact that the plaintiffs are not the real parties in interest does not necessarily preclude an award of attorney fees under this section. The fact that the real parties in interest were not parties to the litigation does not disqualify nominal plaintiffs from being considered successful plaintiffs who are eligible for attorney fees under this section. *City of Wheat Ridge v. Cerveney*, 913 P.2d 1110 (Colo. 1996).

The amendment's provision for attorney fees and costs in favor of successful plaintiffs does not contravene the constitutional requirement for equal protection by denying similar treatment to successful governmental defendants. The scheme set out in the amendment bears a rational relationship to a permissible governmental purpose; the facilitation of taxpayer suits to enforce compliance with the purpose of restraining governmental growth. *Cerveney v. City of Wheat Ridge*, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996).

The sale of lottery tickets does not constitute a "property sale" under this section. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section does not use the terms "gift" and "grant" synonymously. "Gifts" are exempt from fiscal year spending; however, if an entity receives more than ten percent of its revenues in "grants," the entity is disqualified as an enterprise. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Net lottery proceeds are not to be excluded from state fiscal year spending as "gifts". Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

It is erroneous to exclude net lottery proceeds from the purview of this section on the basis of a characterization of the great outdoors Colorado trust fund board created under article XXVII of the Colorado Constitution as a "district" or "non-district". Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

By its terms, this section also limits the growth of state revenues, usually met by tax increases, by restricting the increase of fiscal year spending to the rate of inflation plus population increase, unless voter approval for an increase in spending is obtained. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

If the revenues of the state or a local government increase beyond the allowed limits on fiscal year spending, any excess above the allowed limit or voter-approved increase must be refunded to the taxpayers. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The E-470 public highway authority meets the definition of an "enterprise" under this section because it has authority to issue bonds, it receives less than ten percent of its annual revenues in grants, it acts as a business by providing a service for a fee in the form of tolls, and it is government-owned. The authority is therefore not subject to the election requirements of this section. *Bd. of County Comm'rs v. E-470 Pub. Hwy.*, 881 P.2d 412 (Colo. App. 1994).

Board of county commissioners was acting pursuant to express grants of constitutional and statutory authority in creating the Eagle county air terminal corporation as an enterprise and empowering it to act on county's behalf in constructing and operating a new commercial passenger terminal. *Bd. of Comm'rs v. Fixed Base Operators*, 939 P.2d 464 (Colo. App. 1997).

Trial court properly determined that the Eagle county air terminal corporation was an enterprise rather than a district. Corporation was a government-owned and controlled non-profit corporation authorized to issue its own revenue bonds and it received no revenue in the form of grants from state and local governments. *Bd. of Comm'rs v. Fixed Base Operators*, 939 P.2d 464 (Colo. App. 1997).

An irrigation district is not a local government within the meaning of the amendment's taxing and spending election requirements. The private character of a 1921 Act irrigation district differs in essential respects from that of a public governmental entity exercising taxing authority contemplated by the amendment. An irrigation district exists to serve the interests of landowners not the general public. Rather than being a local government agency, a 1921 Act irrigation district is a public corporation endowed by the state with the powers necessary to perform its predominately private objective. *Campbell v. Orchard Mesa Irr. Dist.*, 972 P.2d 1037 (Colo. 1998).

Trial court properly concluded that urban renewal authority is not subject to the requirements of this section. Urban renewal authority at issue has no authority to levy taxes or assessments of any kind and there is no provision for authority to conduct elections of any kind. Based upon these factors, urban renewal authority is not a "local government" and, therefore, not a "district" within the meaning of this section. *Olson v. City of Golden*, 53 P.3d 747 (Colo. App. 2002).

III. REQUIREMENT OF ADVANCE VOTER APPROVAL.

Definition of "ballot issue," for purposes of subsection (3)(a) regarding scheduling of elections, is limited to fiscal matters. *Zaner v. City of Brighton*, 899 P.2d 263 (Colo. App. 1994), *aff'd*, 917 P.2d 280 (Colo. 1996).

Language in subsection (3)(a) that allows voters to "approve a delay of up to four years in voting on ballot issues" does not mean that voters' waiver of revenue and spending limits must be limited in duration to four years. *Havens v. Bd. of County Comm'rs*, 58 P.3d 1165 (Colo. App. 2002).

A substantial compliance standard is the proper measure when reviewing claims brought to enforce the election provisions of this section. In determining whether a district has substantially complied with a particular provision of this section, courts should consider factors, including: (1) The extent of the district's noncompliance; (2) the purpose of the provision violated and whether the purpose is substantially achieved despite the district's noncompliance; and (3) whether it can reasonably be inferred that the district made a good faith effort to comply or whether the district's noncompliance is more properly viewed as the product of an intent to mislead the electorate. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994); *Bruce v. City of Colo. Springs*, 129 P.3d 988 (Colo. 2006).

A plaintiff suing under this section's enforcement clause need not set forth in the complaint facts showing that the claimed violations affected the election results. A requirement that a plaintiff allege facts that the election results would have been different had the claimed violations not occurred would make enforcement of the provisions of this section effectively impossible in most elections. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

The incurrence of a debt and the adoption of taxes as the means with which to repay that debt are properly viewed as a single subject when presented together in one ballot issue. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

Ballot title is not a ballot title for tax or bonded debt increases and the city is not required to begin the measure with the language "Shall city taxes be increased by up to 8 million dollars?". The primary purpose and effect of the measure is to grant a franchise to a public utility to furnish gas and electricity to the city and its residents, although the ballot title also seeks authorization for a contingent tax increase of up to \$8,000,000 to be implemented only in the highly unlikely event that the city were unable to collect from the public utility. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

A ballot issue to extend an existing tax is not a tax increase for purposes of subsection (3)(c), and the title of such a ballot issue, therefore, need not include the mandatory language for ballot issues to increase taxes specified in subsection (3)(c). *Bruce v. City of Colo. Springs*, 129 P.3d 988 (Colo. 2006).

Ballot title violates subsection (3)(c) by failing to include an estimate of the full fiscal year dollar increase in ad valorem property taxes. All that is required is a good faith estimate of the dollar increase. To create an exemption from the requirements of subsection (3)(c) any time a district has difficulties estimating its proposed tax increases would undermine the primary purpose of the disclosure provisions of this section. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

A claim that a ballot issue proposed a "phased-in" tax increase and that a ballot title that disclosed only the first rather than the final full fiscal year dollar increase was, therefore, improper under subsection (3)(c) involved only the form and content of the ballot title, could be resolved by the type of summary adjudication contemplated by the applicable ballot title contest statute, and was subject to and time-barred by the statutory five-day filing limit set forth in § [1-11-203.5](#) (2). *Cacioppo v. Eagle County Sch. Dist.* RE-50J, 92 P.3d 453 (Colo. 2004).

The purpose of the disclosure requirements regarding the dollar estimate of a tax increase is to permit the voters to make informed choices at the ballot. That purpose was not substantially achieved in the case of the proposed ad valorem property tax increase because the ballot title failed to give any indication of the potential

magnitude of the tax increase. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

The only portion of the ballot measure that should be invalidated for failure to provide estimate of the tax increase is the authorization for the city to increase ad valorem property taxes "in an amount sufficient to pay the principal and interest on" the open space bonds. The first portion of the measure, which authorizes the city to issue bonds, does not violate this section and need not be stricken from the measure. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

Requirement in subsection (3)(b)(V) that election official summarize relevant written comments does not lend itself to imposing a requirement upon election officials to examine the motives or good faith of voters submitting the comments. Such an examination, moreover, would present significant freedom of speech concerns with respect to the voter's right to submit comments and could deprive the electorate of comments to make an intelligent decision on a proposal. The plaintiff, accordingly, was not entitled to a declaratory judgment. *Gresh v. Balink*, 148 P.3d 419 (Colo. App. 2006).

The calculation method employed to calculate fiscal year spending is not prohibited by the plain language of this section. It is entirely unclear whether the city's cash reserves are properly viewed as a reserve increase, a reserve transfer, or a reserve expenditure for purposes of subsection (2)(e). Plaintiffs' claim that the city's calculation of its fiscal year spending data may have misled the voters is without foundation because the city clearly disclosed in its election notice that fiscal year spending included the accrual of the cash reserves. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

Failure of election notice to include the overall percentage change in fiscal year spending over a five-year period is not significant. All of the information relevant to calculating the overall percentage change was provided by the city in its chart. On the whole, the election notice substantially complies with the disclosure requirements set forth in subsection (3)(b). *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

Where there is a discrepancy between the total debt repayment cost stated in the election notice and the amount stated in the ballot title, the district should be bound by the lower figure. The electorate did not receive any advance warning of the higher debt repayment cost stated in the ballot title. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

The absence of the district's submission resolution from the election notice did not make the election notice insufficient or misleading in any way. This section does not require districts to include in their election notices the ministerial acts, orders, or directions of the governing body authorizing submission of a particular initiative to the electorate where to do so would be duplicative and potentially confusing and would not add any substantive information to the election notice that was not already disclosed in the ballot title. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

Transportation revenue anticipation notes issued in accordance with § [43-4-705](#), constitute a "multiple fiscal year direct or indirect district debt or other financial obligation whatsoever" that requires voter approval. It is evident that the state is receiving money in the form of a loan from investors. Because the notes are negotiable instruments, it can be implied that the notes contain an unconditional promise of payment. It is apparent that the payment obligations are likely to extend into multiple years because the state must make a pledge of its credit for the notes to be marketable. Given the amount of notes issued in comparison to the annual budget of the department of transportation, it is reasonable for the voters to have expected that the notes would be submitted to them for their consideration. *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999).

Economic incentive development agreements do not create a "multiple-fiscal year direct or indirect district debt or other financial obligation" requiring voter approval. The language of the agreement leaves the decision to make reimbursement payments to the discretion of the city council. Moreover, the agreements are not contingent on borrowing of funds, the extension of the city's credit, or any payments for which funds are unavailable. *City of Golden v. Parker*, 138 P.3d 285 (Colo. 2006).

Lease-purchase agreements authorized by House Bill 03-1256 did not constitute a "multiple fiscal year direct or indirect district debt or other financial obligation whatsoever" that requires voter approval. The lease-purchase agreements authorized do not pledge the credit of the state or require the borrowing of funds, and lease payment obligations of the state are subject to discretionary annual appropriations. *Colo. Crim. Justice Reform Coalition v. Ortiz*, 121 P.3d 288 (Colo. App. 2005).

Transfers from cash funds to the general fund do not constitute a tax policy change directly causing a net tax revenue gain. The transfers involve fees and not taxes, and consequently, they cannot involve a net revenue gain. Moreover, transfers are a redistribution of revenue rather than an increase in overall revenue. *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008).

Nor do they constitute a new tax or a tax rate increase. *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008).

A charge is a fee and not a tax when the express language of its enabling legislation explicitly contemplates that its primary purpose is to defray the cost of services provided to those charged. When determining whether a charge is a fee or a tax, courts must look to the primary or principal purpose for which the money was raised, not the manner in which it was ultimately spent. *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008).

Leases containing nonappropriation clauses do not create multiple-fiscal year obligations requiring voter approval in advance, and a lease that includes an initial 20-month period before its nonappropriation clause takes effect also does not require voter approval in advance because the district had adequate present cash reserves pledged for the first 20 months of lease payments. *Bruce v. Pikes Peak Library Dist.*, 155 P.3d 630 (Colo. App. 2007).

Subsection (4)(a) does not require a school district to obtain voter approval for every tax or mill levy, but only for those taxes that are either new or represent increases from the previous year. To the extent that the school district's 1992 mill levy was the same as the previous year, subsection (4)(a) did not apply. *Bolt v. Arapahoe County Sch. Dist. No. 6*, 898 P.2d 525 (Colo. 1995).

Subsection (4)(a) does not require a second election at either the local or state level for legislation directing how revenue received as a result of a waiver election should be used. Such legislation is not a policy change, but an implementation of the waiver election. *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519 (Colo. 2009).

A pre-TABOR election can serve as "voter approval in advance" for a post-TABOR mill levy increase. *Bruce v. Pikes Peak Library Dist.*, 155 P.3d 630 (Colo. App. 2007).

Advance voter approval requirement held satisfied by 1984 approval of issuance of general obligation bonds. The incurring of debt and the repayment of that debt are issues that are so intertwined that they may properly be submitted to the voters as a single subject. *Bolt v. Arapahoe County Sch. Dist. No. 6*, 898 P.2d 525 (Colo. 1995).

Voters may give present approval for future increases in taxes under this section when the increase might be necessary to repay a specific, voter-approved debt. *Bolt v. Arapahoe County Sch. Dist. No. 6*, 898 P.2d 525 (Colo. 1995).

Abatements and refunds levy, designed to recoup tax revenue lost because of an error in assessment, is not subject to subsection (4)(a). But for the error, such revenue would have been collected, and the total dollar amount of taxes imposed does not increase although the mill levy rate may change. *Bolt v. Arapahoe County Sch. Dist. No. 6*, 898 P.2d 525 (Colo. 1995).

District levy for purposes of meeting federal requirements predated this section, hence was exempt, in view of statutory budgeting process that gives no discretion to board of county commissioners to alter budget fixed earlier in the year. *Bolt v. Arapahoe County Sch. Dist. No. 6*, 898 P.2d 525 (Colo. 1995).

While authority's bonds constituted a financial obligation under this section, the remarketing of the bonds nevertheless was not subject to subsection (4)(b), since the bond remarketing scheme does not create any new obligation, it merely remarketed debt that was authorized before the enactment of this section under the terms of a financing plan adopted at the time the debt was issued. *Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth.*, 881 P.2d 412 (Colo. App. 1994); *Nicholl v. E-470 Pub. Hwy. Auth.*, 896 P.2d 859 (Colo. 1995).

Intergovernmental loan repayment was a new multi-year fiscal obligation to which subsection (4)(b) applied and authority must obtain voter approval before incurring this debt. *Nicholl v. E-470 Pub. Hwy. Auth.*, 896 P.2d 859 (Colo. 1995).

A broadly worded, voter-approved waiver of revenue limits, authorizing school districts to collect and

retain all revenues notwithstanding the limitations of this section does just that, with no restrictions or language requirements. There are no specific language requirements for this type of waiver election. *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519 (Colo. 2009).

Expansion of local use tax base to include all tangible personal property rather than only construction or building materials constituted a new tax and required voter approval in advance under subsection (4)(a). *HCA-Healthone, LLC v. City of Lone Tree*, 197 P.3d 236 Colo. App. 2008).

The delayed voting provision of subsection (3)(a) does not authorize retroactive voter approval of new taxes or other revenue generating measures requiring voter approval in advance under subsection (4)(a). In adopting this section, the voters intended that approval of a tax must occur before it is imposed, not afterward, and an interpretation of this section that prohibits retroactive approval reasonably restrains government more than a contrary interpretation. *HCA-Healthone, LLC v. City of Lone Tree*, 197 P.3d 236 Colo. App. 2008).

IV. SPENDING AND REVENUE LIMITS.

Strict compliance with the revenue and spending limitations of this section is required. While a substantial compliance standard of review applies to the election provisions of this section in order to ensure that the voting franchise is not unduly restricted and prevent a court from lightly setting aside election results, this section contains no "de minimis" or "substantial compliance" exception to its revenue and spending provisions. *Bruce v. Pikes Peak Library Dist.*, 155 P.3d 630 (Colo. App. 2007).

The school finance act incorporated by reference the property tax revenue limit and each district's corresponding ability to waive that limit pursuant to subsection (7)(c). The property tax revenue "limit" imposed by the school finance act is a reference to the subsection (7)(c) limit and not an "other limit" as contemplated by subsection (1). *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519 (Colo. 2009).

The electorate of a governmental entity may authorize retention and expenditure of the excess collection without forcing a corresponding revenue reduction. *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

Although the great outdoors Colorado trust fund board is not a local government, private entity, agency of the state, or enterprise under this section, it is essentially governmental in nature and the best reading of this section is to exclude from state fiscal year spending limits only those entities that are non-governmental since this interpretation is the interpretation that reasonably restrains most the growth of government. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Section 9 of article XVIII of the Colorado Constitution prohibits the general assembly from enacting limitations on revenues collected by the Colorado limited gaming commission in order to comply with this section, and insofar as revenues generated by limited gaming might tend in a given year to violate the spending limits imposed by this section, the general assembly may comply with this section by decreasing revenues collected elsewhere, or if that is impossible after the fact, the general assembly may comply with this section by refunding the surplus to taxpayers. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The party seeking to invoke the "preferred interpretation" has the burden of establishing that its proposed construction of this section would reasonably restrain the growth of government more than any other competing interpretation. The mere assertion by a party that its interpretation would "reasonably restrain most the growth of government" is not dispositive. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

"Offset" is not a term of art defined by this section or utilized in a compensatory financial sense in the applicable provision; rather, read in context, the reasonable meaning of the operating phrase "revenue change as an offset" in subsection (7)(d) is that voter approval for the excess revenue retention constitutes the required offset to the refund requirement which otherwise would apply. *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

The electorate's approval for retention of the excess revenues as a "revenue change" is the required "offset" to the governmental entity's otherwise applicable refund obligation: "[T]he excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset." *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

Remarketing of revenue bonds does not constitute creation of debt requiring voter approval under this

section because the remarketing does not create any new debt, impose any tax, or expose taxpayers to any new liability or obligation. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994).

Under this section, bonded debt increases annual fiscal spending only by the amount of the debt service, not by the amount of the borrowed funds expended; thus, the expenditure of the escrowed bond proceeds for further construction and the operation of E-470 highway does not impact annual fiscal spending, and is not subject to the voter approval requirements of subsection (7)(d). Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994); Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

The collection and expenditure of Authority revenues for service on bonds are "changes in debt service," to which the provisions of subsection (7)(b) do not apply under the plain language of this section. Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994); Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

It is incorrect to interpret the phrase "revenue change as an offset" in subsection (7)(d) to require that offsetting revenue reductions must be paired with the retained excess revenues for the following reasons: (1) Such a construction would restrict the electorate's franchise in a manner inconsistent with the evident purpose of this section, which is to limit the discretion of governmental officials to take certain taxing, revenue, and spending actions in the absence of voter approval; (2) such a construction does not accord with legitimate voter expectations that this section, if adopted, would defer to citizen approval or disapproval certain proposed tax, revenue, and spending measures that varied from this section's limitations; (3) the general assembly has construed this section as including the approval of revenue changes, under subsection (7) by means of measures referred to the voters by local government; (4) such a construction conflicts with the clear pattern of this section deferring to voter choice in the waiver of otherwise applicable limitations; and (5) the court has declined to adopt a rigid interpretation of this section which would have the effect of working a reduction in government services. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Subsection (8)(c) prohibits a presumption in favor of any pending valuation in order to put a taxpayer on equal footing with a county in property tax valuation proceedings but does not address or modify a taxpayer's burden of proof at a board of assessment appeals proceeding. A taxpayer thus must prove by a preponderance of the evidence only that an assessment is incorrect to prevail at a board of assessment appeals proceeding and is not required to establish an appropriate basis for an alternative reduced valuation for the property at issue. Bd. of Assessment Appeals v. Sampson, 105 P.3d 198 (Colo. 2005).

The language "tax policy change" cannot be applied to any policy modifications that may have a de minimis impact on a district's revenues. In some cases, the cost of the election to authorize a tax policy change could exceed the additional revenue obtained, which would be an unreasonable result that the voters could not have intended when they passed this section. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

A "tax policy change directly causing a net revenue gain" only requires voter approval when the revenue gain exceeds the limits dictated by subsection (7). To find that a tax policy change resulting in a net tax revenue gain that does not violate subsection (7) revenue limits requires voter approval would eliminate the need for the detailed revenue limits entirely. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

V. STATE MANDATES.

"Subsidy" of state by county is legally impossible. Attempted turnback by county of its responsibilities under human services code pursuant to subsection (9) was invalid because when a county (itself a political subdivision of the state) attempts to subsidize the state, the state, through the county, contributes to itself. Therefore, county's contribution to cost of social services program is not a "subsidy" and subsection (9) does not apply. Romer v. Bd. of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

This section did not change the mixed state and local character of social services. Romer v. Bd. of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

A county's duties to the state court system, including security, may not be reduced or ended pursuant to subsection (9). State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

